

Sample Resolution Supporting Measure D for Safe Streets

WHEREAS: Measure D has been placed on the November General Election to continue an existing ½ cent sales tax to fund the repair and maintenance of the streets and roads in Imperial County and in its cities;

WHEREAS: Renewing Measure D, which has provided the bulk of money used to maintain local streets for the last 20 years, will result in safer streets and expand local transit services for senior citizens;

WHEREAS: Imperial County, one of the fastest growing counties in California with a population expected to increase by 70 percent in the next 20 years, is under increasing pressure to maintain and expand the local streets and roads;

WHEREAS: Creating a strong local economy and jobs for a growing population requires a secure funding stream to ensure streets and roads can be maintained and improved:

WHEREAS: Measure D will continue the existing ½ cent sales tax for 40 more years, ensuring that all who buy goods, not just local residents, in Imperial County assist with the financing of local street and road repair and maintenance;

WHEREAS: The passage of Measure D qualifies Imperial County as a "self help" county, making it eligible to receive hundreds of millions of dollars in state highway funds over the next 40 years;

WHEREAS: Measure D on the November Ballot includes additional fiscal safeguards to ensure the ½ cent sales tax is spent appropriately, including: the requirement that funds be placed in a Restricted Trust Fund; the creation of a Local Taxpayer Supervising Committee to monitor spending; mandatory independent financial audits; the requirement that all transportation projects be completed at the lowest possible cost to taxpayers; and the stipulation that no more than 1 percent of the funds be spent on administration.

NOW, THEREFORE LET IT BE RESOLVED: That the _____ supports the passage of Measure D to continue the ½ cent sales tax to continue the vital revenue stream needed to repair and maintain streets and roads in Imperial County and in its cities.

**THE IMPERIAL COUNTY LOCAL TRANSPORTATION AUTHORITY RETAIL
TRANSACTIONS AND USE TAX ORDINANCE AND EXPENDITURE PLAN**

Ordinance No. 1-2008

The Imperial County Local Transportation Authority hereby ordains as follows:

SECTION 1. Title. This ordinance shall be known as the Imperial County Retail Transactions and Use Tax Ordinance and continues in effect the existing retail transactions and use tax adopted pursuant to Ordinance 1-90 for an additional forty (40) years. This ordinance shall be applicable in the incorporated and unincorporated territory of the County of Imperial, which territory shall be referred to as "County."

SECTION 2. Effective and Operative Date. This ordinance shall take effect immediately upon passing by the requisite percentage of voters provided by law when voting on the ordinance takes place. Such voting is to be within Imperial County in a special election called for that purpose by the Imperial County Board of Supervisors and the ordinance shall become operative on April 1, 2010.

SECTION 3. Purpose. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. This ordinance provides for the continuation of a retail transaction and use tax of one-half of one percent (0.5%), the authority to issue limited tax bonds, the administration of the tax proceeds, a County transportation expenditure plan, the establishment of a Local Taxpayer Supervising Committee, hereinafter "LTSC," and the establishment of an appropriation limit, and is enacted pursuant to the provisions of Division 19 of the Public Utilities Code and limited to eligible expenditures for transportation within Imperial County.

B. To continue to impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 180204 of the Public Utilities Code which authorizes the Authority to adopt this tax ordinance which shall be operative if a two-thirds majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

C. To adopt the continuation of a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

D. To adopt the continuation of a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

E. To adopt a continuation of a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 4. Definitions. The following definitions shall apply in this ordinance:

A. "Expenditure Plan" means the Imperial County Local Transportation Authority Expenditure Plan, attached and adopted as part of this ordinance, including any future amendments thereto.

B. "County" means both the unincorporated and incorporated territory of the County of Imperial.

C. "Authority" means the Imperial County Local Transportation Authority, a public agency subject to the Ralph M. Brown Act and any amendments thereto.

D. "Local streets and roads eligible expenditures" means all purposes necessary and convenient to the maintenance, operation, and construction of local streets and roads and shall include all purposes allowable under Art. XIX, Section 1(a) of the State Constitution.

E. "Transportation" means local streets, roads, and highways, and transit projects and facilities.

SECTION 5. Imposition of Retail Transactions and Use Tax. In addition to any other taxes authorized by law, there is hereby imposed, in the incorporated and unincorporated territory of the County of Imperial, for the privilege of selling tangible personal property at retail,

a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance. An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

The retail transactions and use tax, referred to as the "tax," at the rate of one-half of one percent (0.5%) shall be imposed for a period of forty (40) years. The tax shall be in addition to any other taxes authorized by law including any existing or future state or local sales tax or transactions and use tax. If, during this time period, additional state or federal funds become available which would fund the projects contained in the Expenditure Plan, then the tax may be reduced by action of the Authority. The Authority shall give written notice of the rate reduction to the Board of Equalization not less than 110 days prior to the operative date of the reduction which shall be at the end of a calendar quarter.

SECTION 6. Place Of Sale. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 7. Bonding Authority. Upon voter approval of the measure, the Authority shall have the authority to issue bonds payable from proceeds of the tax to accelerate the construction of needed transportation facility improvements. The Authority, in allocating the annual revenues from the measure, shall meet all debt service requirements prior to allocating funds for other projects. The maximum bonded indebtedness which may be outstanding at any

one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account.

SECTION 8. Amendments. Subsequent to the effective date of this ordinance all amendments to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

SECTION 9. Severability. If any tax or provision of this ordinance is for any reason held invalid or unenforceable by a court of competent jurisdiction that holding shall not affect the validity or enforceability of the remaining taxes or provisions and the Authority declares that it would have passed each part of this Ordinance, irrespective of the validity of any other part.

SECTION 10. Appropriations Limit. Pursuant to Section 4, Art. XIII B of the California Constitution, an annual appropriations limit for certain governmental agencies must be established. The maximum annual appropriations limit for the Authority has been established as \$15,000,000 (Fifteen million dollars). The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the retail and use tax revenues imposed in Section 5 are subject to the appropriations limit of the Authority.

SECTION 11. Implementing Ordinances. Upon approval of this measure by the voters, the Authority shall, in addition to the local rules required to be provided pursuant to this ordinance, adopt implementing ordinances and rules and take such other actions as may be necessary and appropriate to carry out its responsibilities.

SECTION 12. Composition, Duties and Responsibilities of the Local Taxpayer Supervising Committee.

A. LTSC Goals and Functions. Voter adoption of this transportation sales tax ordinance shall result in creation of the LTSC as follows: The LTSC shall review the fiscal performance of the sales tax transportation program through an annual audit to ensure that all transportation sales tax funds are spent by the Local Transportation Authority (hereafter referred

to as the Authority) in accordance with all provisions of the voter-approved Expenditure Plan and ordinance. The LTSC'S other mission is to provide positive, constructive advice to the Authority on how to improve implementation over the forty-year course of the program for the benefit of Imperial County residents and businesses, and to study and report on other issues related to the current or future use of transportation sales tax funds that may be expressly authorized by the Authority.

B. **Audit Requirement.** The LTSC shall supervise annual fiscal, program and periodic performance audits which shall be performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and based on performance standards adopted by the Authority Board for each program or project funded in whole or in part with sales tax funds. The initial set of performance standards shall be adopted not later than July 1, 2009 and shall be updated every 5 years thereafter.

C. **Role of Financial and Performance Audits.** The LTSC shall, under the competitive procurement rules of the Authority, and with the active involvement of the Authority Executive Director, the concurrence and the approval of the Authority, select a professional auditor to conduct the fiscal and performance audits of expenditure(s) of all sales tax funds, report findings based on the audits to the Authority and to the public, and recommend any additional audits that the LTSC believes may improve the financial operation and integrity of program implementation, while meeting all voter mandates. No professional audit firm shall conduct more than three consecutive fiscal audits during the course of the 40 year sales tax extension.

The Authority, with the direct participation of the LTSC, shall hold publicly noticed meetings, which may or may not be part of a regularly scheduled Board meeting, to consider the findings and recommendations of the audits. A report of the findings and recommendations of each audit by the LTSC shall be made available to the public in print and on the Authority's electronic website.

D. **Membership and Selection Process.** The Authority shall develop an open selection process that actively advertises for potential members and select three committee members who are all residents of Imperial County and possess the following professional and/or community credentials:

One member who is a professional, --active or retired-- in the field of municipal audit, finance and/or budgeting with at least five years in a relevant and senior decision-making position in the public or private sector.

One member who is a licensed civil engineer or trained transportation planner --active or retired-- with at least five years of demonstrated experience in the field of transportation in government and/or the private sector.

One member who is a current or retired manager of major public and/or privately financed development or construction projects, who by training and experience would understand the complexity, costs and implementation issues involved in building large scale infrastructure improvements.

The Chair of the Authority Governing Board, the Executive Director of the Authority, and the County Auditor-Controller shall serve as ex-officio, non-voting, members of the LTSC.

E. Terms and Conditions for Committee.

- Members shall serve staggered four-year terms. In no case shall any voting committee member serve more than two terms years on the LTSC. A member who is appointed to fill a partial term that is less than 2 years shall be allowed to serve for 2 full terms in addition to the time served during the partial term.
- Members shall serve without compensation, except they shall be reimbursed for authorized travel and other expenses directly related to the work of the LTSC.
- Members cannot be current locally elected officials in the county or a full time or part time staff member of any city, the county government, local transit operator, or state transportation agency.
- If and when vacancies on the LTSC occur on the part of voting committee members, the Authority shall appoint an appropriate replacement within 90 days of the vacancy to fill the remainder of the term.

F. Sales Tax Local Taxpayer Supervising Committee Operation Protocols. Given the forty-year duration of the sales tax extension, the LTSC shall be appointed 120 days after the effective date of the sales tax extension and continue as long as sales tax funds from the current voter authorization are made available. The Authority Board and its staff shall fully cooperate with and provide necessary financial and staff support to ensure that the LTSC effectively carries

out its duties and obligations. The annual cost of the audits of the LTSC shall not exceed \$150,000, adjusted for inflation.

G. **Conflict of Interest.** LTSC voting members are prohibited from acting in any commercial activity directly or indirectly involving the Authority, such as being a consultant or vendor to the Authority during their tenure on the LTSC. LTSC voting members shall not have a direct commercial interest or employment with any public or private entity that receives transportation sales tax funds authorized by the voters in this ordinance.

SECTION 13. Contract With State. Prior to the operative date, the Authority shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 14. Adoption Of Provisions Of State Law. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

SECTION 15. Limitations On Adoption Of State Law And Collection Of Use Taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

SECTION 16. Permit Not Required. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

SECTION 17. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Authority, or against any officer of the State or the Authority, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 18. Exemptions And Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the District shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this District of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer.

7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect

use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property, the storage, use or other consumption of which is subject to the use tax.

PASSED, ADOPTED AND APPROVED by the Imperial County Local Transportation Authority this _____, 2008, by the following votes:

Ayes: _____ Noes: _____ Abstains: _____ Absent: _____

Attest:

Larry Grogan,
Chairman of the Board of the
Imperial County Local Transportation Authority

Sylvia Bermudez,
Clerk of the Board of the
Imperial County Local Transportation Authority

**THE IMPERIAL COUNTY
LOCAL TRANSPORTATION AUTHORITY RETAIL TRANSACTIONS
AND USE TAX EXPENDITURE PLAN**

SECTION 1. Title. This Expenditure Plan shall be known as the Imperial County Local Transportation Authority Retail Transactions and Use Tax Expenditure Plan.

SECTION 2. Retail Transactions and Use Tax Revenue. This is a ballot measure before the voters of Imperial County. The Measure, if passed by the requisite percentage of voters at the time voting on the ordinance takes place, will continue the current sales tax in Imperial County at one-half of one percent (0.5%) for a period of forty (40) years. The revenue generated will provide funding for transportation improvements during the forty year period.

SECTION 3. Authority. The Imperial County Local Transportation Authority was created by the Board of Supervisors of the County of Imperial in 1989, with the representation approved by a majority of the cities of Imperial County representing a majority of the population, to administer the local option sales tax. The membership is comprised of a city council member from each incorporated city within Imperial County and two members of the Imperial County Board of Supervisors. The Imperial County Local Transportation Authority is referred to as the "Authority" herein.

SECTION 4. Purpose. The purpose of the Expenditure Plan is to identify and program transportation improvements utilizing revenues from the proposed renewal of the sales tax and to ensure that the revenue generated by the sales tax is spent in the most efficient and effective manner.

A. The revenues received by the Authority pursuant to the adoption of this Measure, after deduction of required Board of Equalization costs for performing the functions specified in Section 132304(b) of the Public Utilities Code, shall be used to improve transportation and transit, e.g., senior transit, facilities county-wide as set forth in this Expenditure Plan.

B. After the deduction of the administrative expenses of the Authority of a maximum of one percent (1%), the balance of the revenue shall be allocated as follows:

1. Up to five percent (5%) for state highway improvements within Imperial County; and except that the Authority, with the affirmative vote of at least two-thirds (2/3) of its members, may allocate funds in excess of the five

percent (5%) limitation herein for state highway improvement projects if that action would result in the allocation of state or federal matching funds in an amount equal to or greater than the amount allocated under this section by the Authority.

2. A minimum of two percent (2%) of each member agency's share of the annual Measure's half-cent sales tax revenue shall be set aside for transit projects. The minimum two percent (2%) set aside requirement is not intended to prohibit expenditure of a larger percentage for transit projects that may be proposed by the individual agencies or by a combination of agencies. Expenditures should be compatible and coordinated with the regions' transit planning process, programs and services.

3. The balance for local street and road improvements.

C. To ensure the lowest possible cost to taxpayers and maximize accountability, any contract or public project undertaken by a local agency using tax sales resulting from this ordinance shall be subject to contract and/or bid provisions contained in current state and/or federal law.

D. The revenues available for local street and road purposes shall be allocated and expended pursuant to the following distribution formula and priorities:

1. Each Local Agency, including the County of Imperial and each incorporated City within the County of Imperial, shall receive an annual base sum of \$150,000, adjusted annually for inflation as described in the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, "All Items", using the "Annual" column.
2. The remaining revenues after distribution of the base sum shall be distributed to each Local Agency on the following basis:
 - i. Eighty percent (80%) based on total population using the most recent Department of Finance population estimates and as calculated as of January 1 of each year and used to calculate the succeeding fiscal year's appropriation limit.

- ii. Twenty percent (20%) based on maintained street and road mileage as certified and/or submitted to the California Department of Transportation (CALTRANS) by each Local Agency annually.
 - 3. Any new incorporations or annexations which take place shall be incorporated into the formula beginning with the subsequent fiscal year.
 - 4. Funds shall be expended in accordance with the following priorities:
 - i. to repair and rehabilitate existing roadways;
 - ii. to reduce congestion and improve safety;
 - iii. to provide for the construction of needed facilities.
- E. The revenues available for highway purposes shall be allocated only to those state highways within Imperial County and in accordance with the Expenditure Plan, subject to the following provision:
- 1. No revenues as provided for in this section shall be allocated for any state highway projects until the Authority has certified that Imperial County is receiving at a minimum its fair share of highway funds from the state. The determination of fair share shall consider all relevant factors including the degree to which Imperial County is receiving its statutory county minimum funding for all budgeted, expended, and programmed state and federal highway funds. The policies and project approval actions of the California Transportation Commission and CALTRANS will also be reviewed to insure that Imperial County is receiving full consideration in the allocation of any additional uncommitted state and federal highway funding. Part of the certification shall include a finding that the state has not reduced any state highway fund allocation to Imperial County as a result of the addition of any local revenues as provided herein. The certification shall be made annually in the Regional Transportation Improvement Program.
 - 2. If, prior to the start of any fiscal year, the Authority does not make the certification finding required herein, then, except for previous commitments of this revenue by the Authority, the Authority may redistribute remaining revenues for local street and road purposes.

3. Once any state highway facility or usable portion thereof is constructed to at least minimum acceptable state standards, the state shall be responsible for the maintenance and operation thereof.
4. All state highway improvements which require funds from revenues as provided in this Measure, including project development and overall project management, shall be a joint responsibility of CALTRANS and the Authority. All major project approval actions including the project concept, the project location, and any subsequent change in project scope shall be jointly agreed upon by CALTRANS and the Authority and, where appropriate, by the Federal Highway Administration and/or the California Transportation Commission.

SECTION 5. Project Programming and Monitoring.

A. The Authority will provide each agency with an annual estimate of revenues for the succeeding five years. Each Local Agency shall annually then develop a five-year list of projects to be funded with revenues made available under Section 4. Each Local Agency shall annually notify the Authority of its policy body's official action approving its five-year list of projects.

B. The Authority shall annually approve a five-year list of projects for each Local Agency based on each Local Agency's submittals to be funded during the succeeding fiscal year. Other than editorial changes, any change proposed by the Authority in the Local Agency's submittals of projects shall require concurrence by a majority of the incorporated cities representing a majority of population. The Local Agency that is the subject of the proposed change by the Authority shall be one of the concurring agencies.

At the request of a Local Agency, the Authority may amend the portion of the program of projects to address the Local Agency's unforeseen emergencies or circumstances arising during the year in accordance with Section 10, Amendments.

A public hearing will be held prior to approval of the annual program of projects. No major projects shall be funded with the revenues made available under this Measure unless the projects are in the approved program of projects.

C. Each Local Agency shall annually prepare a report detailing the expenditure, by project, of any and all sales tax receipts from this measure for the prior fiscal year. Other funds

expended on those projects shall also be listed in order to demonstrate the additional benefit gained by utilizing the other funds to maximize the use of the sales tax receipts. The annual report shall include a detailed description and the amount spent of the sales tax receipts for each project. Contractors performing work shall be listed and the amount of tax funds paid to the individual contractors shall be provided in the report. The annual report shall be provided to the Local Taxpayer Supervising Committee by November 1st of each year.

SECTION 6. Maintenance of Effort. It is the intent of the Legislature and the Authority that revenues provided from this measure be used to supplement existing local revenues being used for the purposes set forth in Section 4 herein. Each Local Agency receiving revenues pursuant to Section 4 shall annually maintain as a minimum the same level of local discretionary funds expended for street and road purposes as was reported in the State Controller's Annual Report of Financial Transactions for Streets and Roads – Fiscal Year 2005-2006. If any Local Agency had extraordinary local discretionary fund expenditures during FY 2005-2006, it may use, as a base for determining the minimum level of local discretionary funds, the average amount of such funds reported to the State Controller for the three-year period FY 2002-2003 through 2005-2006. The use of a three-year average for the base period shall be subject to Authority approval. If any Local Agency foresees an undue hardship in complying with this annual Maintenance of Effort requirement, it may submit a plan describing the situation and demonstrating compliance with the requirement over a multi-year period for approval by the Authority in advance of the fiscal year(s) in question. LTSC shall review the plan and provide a recommendation to the Authority on the proposed alternative compliance plan.

The minimum Maintenance of Effort shall be annually adjusted for inflation as described in the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, U.S. City Average, "All Items", using the "Annual" column. The Authority may waive such annual adjustment upon application if it determines it is warranted due to hardship. The Authority shall not allocate any revenues pursuant to Section 4 to any eligible agency in any fiscal year until that agency has certified to the Authority the extent to which the Maintenance of Effort requirement shall be included in its budget. Any Local Agency which does not certify that it will meet its entire Maintenance of Effort requirement in any given year shall have its funding under Section 4 reduced that year by the amount by which the agency will not meet its level of Maintenance of Effort requirement.

If any audit indicates that any Local Agency does not meet its certified level of Maintenance of Effort in any given year, or over a multi-year period based on a plan approved by the Authority, it shall have its funding under Section 4 reduced in the following year by the amount by which the agency did not meet its certified level of Maintenance of Effort.

Any local street and road revenues not allocated pursuant to the Maintenance of Effort requirement shall be redistributed to the remaining eligible agencies according to the formula described in Section 4.

SECTION 7. Private Sector Funding. Revenues provided from this Measure shall not be used to replace private developer funding which has been or will be committed for any project.

SECTION 8. Administrative Expenses. Revenues may be expended by the Authority for salaries, wages, benefits, overhead, and those services including contractual services necessary to administer the Ordinance; however, in no case shall such expenditures exceed one percent (1%) of the annual revenues provided by the Measure. Cost of performing or contracting for project related work shall be paid from the revenues allocated to the appropriate purpose as set forth in Section 4 herein.

SECTION 9. Establishment of Separate Accounts. Each agency receiving funds pursuant to Section 4 shall deposit said funds in a separate Transportation Improvement Account. Interest earned on funds allocated pursuant to this Ordinance shall be expended only for those purposes for which the funds were allocated.

SECTION 10. Amendments. With the exception of Sections 4(A) and 4(B) which require a majority vote by the Imperial County Board of Supervisors and a majority of the incorporated cities representing a majority of population to amend, this Expenditure Plan may be amended to further its purposes by ordinance or resolution, passed by roll call vote entered in the minutes, with two-thirds of the Authority concurring.

SECTION 11. Program of Projects. The following program of projects includes candidate projects for maintenance and new facility construction on local streets and roads and state highways. These projects will be completed as estimated revenues become available. The actual delivery of these projects is subject to the actual amount of revenues received by the Authority. After revenues are distributed to each Local Agency, the amounts programmed for either maintenance or new facility construction will vary according to the needs of each agency.